

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

ANGELO FEARS

Case No. C-1-01-183

Petitioner

Judge Rice

Magistrate Judge Merz

vs.

MARGARET BAGLEY,

Warden

**WARDEN'S REPLY TO PETITIONER'S SUPPLEMENTAL
POST-EVIDENTIARY HEARING MEMORANDUM
REGARDING THE IMPACT OF *HAMBLIN***

No new legal ground is broken in *Hamblin v. Mitchell*, 2003 U.S. App. LEXIS 26291 (6th Cir. December 29, 2003). Rather, *Hamblin* simply applies traditional analysis to facts that show defense counsel did no mitigation investigation whatsoever until after the guilty verdict was rendered. And, by acceding to Hamblin's directive that they do no investigation, the entire mitigation presentation consisted of two witnesses: Hamblin's girlfriend and Hamblin himself by way of unsworn statement. In the Fears case, the facts of mitigation investigation and presentation are markedly different.

Moreover, *Hamblin* is a pre-AEDPA case, which circumstance, according to the majority, "permits reviewing federal courts greater latitude in examining the proceedings than is permissible under AEDPA-governed cases." *Hamblin*, Section II A, third paragraph. In contrast, the Fears case is AEDPA governed, and that means the focus of inquiry is the decision of the Ohio Supreme Court, in light of clearly established law as enunciated by the United States Supreme Court.

In *Hamblin*, the only reference to the decision of the Ohio Supreme Court was in a single sentence simply noting that the conviction had been affirmed. *Id.* Section II A, second paragraph.¹ Because the 6th Circuit did not purport to evaluate the decision of the Ohio Supreme Court in light of clearly established caselaw from the United States Supreme Court, the *Hamblin* case will have no more importance to this Court than any other pre-AEDPA 6th Circuit case.

Respectfully Submitted,

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PROOF OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was electronically served upon Lawrence Greger and Stephen Ferrell, attorneys for Petitioner Fears, through this Court's ECF system.

S/Stephen E. Maher
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Attorney for Warden

¹ Cf. *Mitchell v. Esparza*, 2003 U.S. LEXIS 8191 (November 3, 2003), an AEDPA where the Court, in a Per Curiam decision, faulted the Sixth Circuit for "fail[ure] to cite, much less apply, this section [28 USC 2254(d)(1)].